

QWEST CORPORATION

STATE: Washington
DOCKET NO: UT-063061
CASE DESCRIPTION: In the Matter of the Petition of Qwest Corporation for Arbitration with Eschelon Telecom, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996
INTERVENOR: Bench Requests
REQUEST NO: BCH 01-002S1

REQUEST:

The redacted version of the *Petition for Forbearance Pursuant to 47 U.S.C. §160(c) in the Seattle, Washington Metropolitan Statistical Area* repeatedly references the *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area* filed with the FCC as well as the FCC Memorandum and Opinion granting the *Petition*. Accordingly, please provide an unredacted copy of the *Omaha Petition* together with all attachments and an unredacted copy of the FCC Memorandum and Opinion granting the *Petition*. In order to prevent indiscriminate disclosure of these documents, the unredacted copies should be provided pursuant to the terms and conditions in Order 03, Protective Order issued in this docket on September 21, 2006.

RESPONSE:

Please see the confidential documents which are provided on CD in response to this request and are being provided pursuant to the terms of the Protective Order in this proceeding. The only document that is not provided is the non-redacted version of the FCC's Omaha order. Qwest is prohibited by an FCC protective order from duplicating or disclosing the order and has contacted the FCC to determine the procedures, if any, that would allow disclosure of the non-redacted order to the Washington Commission. A copy of the FCC's Protective Order is also attached to this response.

SUPPLEMENTAL RESPONSE DATED 5/21/07:

The Washington Commission must obtain the unredacted Omaha Order directly from the FCC, rather than from Qwest. Under the applicable protective order (hereinafter, the "Protective Order"), Qwest is prohibited from disclosing or even making a copy of the unredacted order.¹

Qwest has made multiple contacts with the FCC regarding this issue. Qwest first contacted the FCC's Wireline Competition Bureau, which issued the Protective Order. The Bureau referred Qwest to Chris Killion in the Office of the General Counsel at the FCC. Mr. Killion, who is a Deputy Associate General Counsel, expressed the view that the current language in the Protective Order does not explicitly permit the FCC to provide a copy of the unredacted order to the Washington Commission.²

Mr. Killion identified three potential options for the Washington Commission to seek access to the unredacted order:

- (1) file a petition under 0.461 of the FCC's rules for access to materials not routinely available for public inspection;³
- (2) file a petition seeking disclosure under the protective order, or, alternatively, seeking to amend the protective order in the Omaha proceeding to allow the FCC to give the document to the Washington Commission;
- (3) contact FCC Chairman Martin's office, specifically Ian Diller, who is Chairman Martin's legal advisor, at (202) 418-1000.

Mr. Killion expressed no view as to the likelihood of success of any of these options. With regard to the third option, it should be noted that paragraph 3 of the Protective Order allows disclosure of confidential documents "to relevant employees of regulatory agencies . . . and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper." Arguably this provision gives the FCC authority to disclose the unredacted order to the Washington Commission without a formal filing. It may be worthwhile to explore this issue further with Chairman Martin's office.

¹ Under the Fully Unredacted Order Recipient Acknowledgment, a recipient agrees that he will "not photocopy or duplicate in any way the unredacted version of the Memorandum Opinion and Order, or any portion thereof, associated with this proceeding and that, as required by the Protective Order, you will not share any Confidential Information with anyone who is not a signatory of the Protective Order." According to the FCC, violation of the applicable protective order would constitute a violation of an order of the FCC. FCC Acknowledgment at 1; Protective Order (June 25, 2004)

² Mr. Killion emphasized that he was not speaking for the agency, but rather expressing his own opinions.

³ 47 C.F.R. § 0.461.